

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDREW JACOB MARSALA,

Plaintiff,

V.

KILOLO KIJAKAZI, Commissioner of
Social Security,

Defendant.

CASE NUMBER: 1:23-cv-01407-GSA

**FINDINGS AND
RECOMMENDATIONS TO DENY
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND TO
REQUIRE FILING FEE PAYMENT,
AND DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN A UNITED
STATES DISTRICT JUDGE**

(Doc. 2)

On September 26, 2023 Plaintiff filed a complaint in this Court and applied to proceed without prepayment of fees (*in forma pauperis*) pursuant to 28 U.S.C. § 1915. Docs. 1–2.

I. Legal Standard

In order to proceed without prepayment of the filing fee, Plaintiff must submit an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). “To proceed in forma pauperis is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). In enacting the in forma pauperis statute, “Congress intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because . . . poverty makes it impossible . . . to pay or secure the costs of litigation.” *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (internal quotations and citations omitted).

The determination whether a party may proceed in forma pauperis is a "matter within the

1 discretion of the trial court . . .” *Weller v. Dickinson*, 314 F.2d 598, 600 (9th Cir. 1963). To proceed
2 in forma pauperis a plaintiff need not demonstrate that he is completely destitute, but his poverty
3 must prevent him from paying the filing fee and providing himself and his dependents (if any) with
4 the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948).
5 Although there is no bright line rule, courts look to the federal poverty guidelines developed each
6 year by the Department of Health and Human Services. *See, e.g., Lint v. City of Boise*, No. CV09-
7 72-S-EJL, 2009 WL 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

8 **II. Findings**

9 Plaintiff’s application reflects that his one-person household (no spouse and no dependent
10 children) receives VA disability income totaling \$4,265 per month (\$51,180 per year), which is
11 substantially in excess (about 350%) of the federal poverty guidelines for a household of 1
12 (\$14,580).¹

13 The application reflects only \$200 in cash on hand between checking and savings accounts
14 and a monthly mortgage of \$1,290. Nevertheless, the substantial gap between Plaintiff’s income
15 and the federal poverty guideline strongly suggests the ability to pay the \$402 filing fee without
16 sacrificing the necessities of daily life.

17 **III. Recommendation**

18 Accordingly, it is RECOMMENDED that Plaintiff’s application to proceed in forma
19 pauperis be denied (Doc. 2).

20 The Clerk of Court is DIRECTED to randomly assign this case to a United States District
21 Judge for resolution of these findings and recommendations pursuant to the provisions of Title 28
22 U.S.C. § 636(b)(1). Within fourteen (14) days from the filing of these findings and
23 recommendations, Plaintiff may file written objections with the court. L.R. 304(b). Such a
24 document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”
25 Plaintiff is advised that failure to file objections within the specified time may result in the waiver
26 of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v.*
27 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

28 ¹ See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

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2 IT IS SO ORDERED.

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Dated: September 29, 2023

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/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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